THE HONOURABLE SRI JUSTICE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE D.APPA RAO

TAKEN UP WRIT PETITION NO.26397 OF 2005

ORAL ORDER: **(per the Honourable Sri Justice D.S.R.Varma)**

Heard Sri M.Panduranga Rao, the learned counsel appearing for the petitioner, the learned Assistant Solicitor General, appearing for the respondent Nos.1 and 6, the learned Government Pleader for Revenue, appearing for the respondent Nos.2, 3 and 4, as well as the learned Government Pleader for Stamps and Registration, appearing for the respondent No.5.

2. This writ petition is taken up on the basis of a 'letter', dated 05.12.2005, by one Sri I.Sambasiva Rao, Advocate, Flat No.306, Royal Residency, Humayun Nagar, Masab Tank, Hyderabad, to the Honourable the Chief Justice, High Court of Andhra Pradesh, Hyderabad, seeking to direct the authorities concerned in connection with the representation of the petitioner for fixing the quota for the disabled in appointment of 'Notary' viz., implementation of
3% reservation for the persons under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity "the Disabilities Act") by making necessary amendments in the quota prescribed for appointment of 'Notary' and a further direction to consider the representation of the petitioner for appointment of 'Notary' either in the State Government or in the Central Government quota.

3. Upon this subject, we requested Sri M.Panduranga Rao, the learned counsel, to assist this Court, who readily accepted for the same.

4. It has been brought to the notice of this Court by
Sri M.Panduranga Rao, the learned counsel for the petitioner, that 'Notary' as such is not a post, as held by Their Lordships of the

Orissa High Court in **NITYANANDA BEHERA vs. STATE OF ORISSA**[1] as well as the Allahabad High Court in **KASHI PRASAD vs. STATE**[2] that the prerequisite for appointment of a 'Notary' is -- one must be an Advocate by profession with prescribed experience at Bar. Such appointment can be made under the Notaries Act, 1952 (for brevity "the Notaries Act").

5. In other words, in both the judgments (1 and 2 supra), it has been held that for appointment of 'Notary', one will not be ceased to be an Advocate.

6. Section 3 of the Notaries Act deals with the power to appoint notaries, which is extracted hereunder, for ready reference and better appreciation of the matter.

> "3. Power to appoint notaries:--**The Central Government for the whole or any part of India, and any State Government, for the whole or any part of the State may appoint as notaries any legal practitioners or other persons who possess such qualifications as may be prescribed."**

7. Rule 13 of the Notaries Rules, 1956 (for brevity "the Notaries Rules") deals with the inquiry into the allegations of professional or other misconduct of a notary, which is extracted hereunder, for ready reference and better appreciation of the matter.

> "13. Inquiry into the allegations of professional or other misconduct of a notary:--**(1) An inquiry into the misconduct of a notary may be initiated either *suo motu* by the appropriate Government or on a complaint received in Form-XIII.**
>
> **(2) Every such complaint shall contain the following particulars, namely: -**
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> **(a) the acts and omissions which, if proved, would render the person complained against unfit to be a notary;**
>
> **(b) the oral or documentary evidence relied upon in support of the allegations made in the complaint.**
>
> **(3) The appropriate Government shall return a complaint which is not in proper form or which does not contain the aforesaid particulars to the complainant for representation after compliance with such objections and within such time as the**

appropriate Government may specify;

Provided that if the subject-matter in a complaint is, in the opinion of the said Government, substantially the same as, or covered by, any previous complaint and if there is no additional ground, the said Government shall file the said complaint without any further action and inform the complainant accordingly.

(4) Within sixty days ordinarily of receipt of complaint, the appropriate Government shall send a copy thereof to the notary at his address as entered in the Register of Notaries.

(4a) Where an inquiry is initiated *suo motu* by the appropriate Government, the appropriate Government shall send to the notary a statement specifying the charge or charges against him, together with particulars, of the oral or documentary evidence relied upon in support of such charge or charges.

(5) A notary against whom an inquiry has been initiated may within fourteen days of the service on him a copy of the complaint under sub-rule (4) or the statement of charges under sub-rule (5a), as the case may be, or within such time as may be extended by the appropriate Government, forward to that Government written statement in his defence verified in the same manner as a pleading in a Civil Court.

(6) If on a perusal of the (written statement, if any, of the notary concerned and other relevant documents and papers, the appropriate Government considers that there is a *prima facie* case against such notary, the appropriate Government shall cause an inquiry to be made in the matter by the competent authority. If the appropriate Government is of the opinion that there is no *prima facie* case against the notary concerned, the complaint (or charge) shall be filed and the complainant and the notary shall be informed accordingly.

(7) Every notice issued to a notary under this rule shall be sent to him by registered post with acknowledgment due. If any such notice is returned unserved with an endorsement indicating that the addressee has refused to accept the notice, the notice shall be deemed to have been served. If the notice is returned with acknowledgment indicating that the addressee cannot be found at the address given, the appropriate Government (shall, if the inquiry was initiated on complaint, ask the complainant to supply to it the correct address of the notary. A fresh notice shall be served upon the notary at the address so supplied.

(8) It shall be the duty of the appropriate Government to place before the competent authority all facts brought to its knowledge which are relevant for the purpose of an inquiry by the competent authority.

(9) A notary (who is proceeded against) shall have a right to defend himself before the competent authority either in person or through a legal practitioner or any other notary.

(10) Except as otherwise provided in these rules the competent authority shall have the power to regulate his procedure relating to the inquiry in such manner as he considers necessary and during the course of inquiry, may examine witnesses and receive any other oral or documentary evidence.

(11) The competent authority shall submit his report to the Government entrusting him with the inquiry.

(12) (a) The appropriate Government shall consider the report of the competent authority, and if in its opinion a further inquiry is necessary, may cause such further inquiry to be made and a further report submitted by the competent authority.

(b) If after considering the report of the competent authority the appropriate Government is of the opinion that action should be taken against the notary, the appropriate Government may make an order, -

(i) cancelling the certificate of practice and perpetually debar the notary from practice, or
(ii) suspending him from practice for a specified period, or
(iii) letting him off with a warning, according to the nature and gravity to the misconduct of the notary proved.

(13) Notification of removal: - The removal of the name of the notary from the Register of Notaries or his suspension from practice, as the case may be shall be notified in the Official Gazette and shall also be communicated in writing to the notary concerned."

8. In other words, one continues to be a professional notwithstanding his appointment as Notary under the Notaries Act. The policy or benefit of a reservation cannot be extended to a class of persons whose appointment is not a post. Admittedly, Notary is not a post.

9. Therefore, the question of issuing a mandamus to the appropriate Government i.e., either the Central Government or the State Government, as the case may be, to comply with the principles of reservations in Notaries, who are physically

challenged, cannot be issued.

10. The case of the petitioner, in the instant case, is that though he is a physically disabled, having practised as an Advocate and gained experience at the Bar, he cannot be divested to be appointed as Notary by the application of the rule of reservation, and accordingly he seeks issuance of writ of mandamus directing the appropriate Government to reserve 3% quota to the physically challenged persons, who have been practising at the Bar as Advocates.

11. As already noticed and held by the Orissa High Court and also the Allahabad High Court, we are of the view that an Advocate once enrolled and becomes a professional, he remains to be
a professional as an Advocate till that capacity ceases by virtue of different contingencies. Undisputedly, the appointment of Notary does not take away the status of an Advocate as
a professional and as such the Notary cannot be treated as a post.

12. The next question that falls for consideration, in the instant case, is, as to what is the test that could be to the physically challenged professionals as Advocates?

13. It is needless to say that the appointment as Notary depends upon one's fitness and different physical faculties.

14. The petitioner is one among such physically challenged persons, who have been practising at the Bar for more than 10 years. The extent of such physical deficiency or capacity, as the case may be, depends upon the assessment by the competent authorities, belong to the appropriate Government. The petitioner, in the instant case, is governed by the competent authority of the State Government.

15. For better appreciation and ready reference, it is apt to extract Section 13 of the Act, which is thus:-

"13. State Coordination Committee:-- **(1). Every State Government shall, by notification, constitute a body to be known as the State Co-ordination Committee to exercise the powers conferred on, and to perform the function assigned to it, under the Act.**

(2). The State Co-ordination Committee shall consist of,-

(a). The Minister-in-charge of the Department of Social Welfare in the State Government, Chairperson, *ex officio*;

(b). The Minister of State in charge of the Department of Social Welfare, if any, Vice-Chairperson, *ex officio*;

(c). Secretaries to the State Government in charge of the Departments of Welfare, Education, Woman and Child Development, Expenditure, Personnel Training and Public Grievances, Health, Rural Development, Industrial Development, Urban Affairs and Employment, Science and Technology, Public Enterprises, by whatever name called, Members, *ex officio*;

(d). Secretary of any other Department which the State Government considers necessary, Member, *ex officio*;

(e). Chairman Bureau of Public Enterprises (by whatever name called) Member, *ex officio*;

(f). five persons, as far as practicable, being persons with disabilities, to represent non-Governmental organisations or associations which are concerned with disabilities, to be nominated by the State Government, one from each area of disability, Members:

Provided that while nominating persons under this clause, the State Government shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes;

(g). three Members of State Legislature, of whom two shall be elected by the Legislative Assembly and one by the Legislative Council, if any;

(h). three persons to be nominated by that State Government to represent agriculture, industry or trade or any other interest, which in the opinion of State Government ought to be represented, Members, *ex officio*;

(i). the Commissioner, Member, *ex officio*;

(j). Secretary to the State Government dealing with the welfare of the handicapped, Member-Secretary, ex officio;

(3). Notwithstanding anything contained in this section, no State Co-ordination Committee shall be constituted for a Union territory and in relation to a Union territory, the Central Co-ordination Committee shall exercise the functions and perform the functions of a State Co-ordination Committee for the Union territory;

Provided that in relation to a Union territory, the Central Co-ordination Committee may delegate all or any of its powers and functions under this sub-section to such person or body of persons as the Central Government may specify."

16. It is brought to the notice of this Court that the functions of the said Co-ordination Committee are enumerated under sub-section (2) of Section-18 of the Disabilities Act and as per clause (f) of sub-section (2) of Section 13 of the Disabilities Act, five persons, as far as practicable, being persons with disabilities, to represent non-Governmental organisations or associations which are concerned with disabilities, to be nominated by the State Government, one from each area of disability, Members, while performing the function assigned to the State Coordination Committee.

17. For better appreciation and ready reference, it is apt to extract Section 18 of the Disabilities Act, which is thus:-

> **18. Functions of the State Coordination Committee:-- (1) Subject to the provisions of this Act, the functions of the State Co-ordination Committee shall be to serve as the state focal point on disability matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities.**
>
> **"(2) In particular and without prejudice to the generality of the foregoing function the State Co-ordination Committee may, within the State perform all or any of the following functions, namely:--**
>
> **(a). review and co-ordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to persons with disabilities;**
>
> **(b). develop a State policy to address issues faced by persons with disabilities;**
>
> **(c). advise the State Government on the formulation of policies, programmes, legislation and projects with respect to disability;**
>
> **(d). review in consultation with the donor agencies, their funding policies from the perspective of their impact on persons with disabilities;**
>
> **(e). take such other steps to ensure barrier-free environment in public places, work places, public utilities, schools and other institutions;**
>
> **(f). monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities;**
>
> **(g). to perform such other functions as may be prescribed by the State Government."**

18. Clauses (b), (c) and (f) of sub-section (2) of Section-18 of the Act are more relevant.

19. Since all the legislations, which are in force, either under the Notaries Act or the Disabilities Act or the Stamps and Registration Act, do not refer to a policy of reservation to the physically challenged professionals as Advocates, it may not be possible for every physically challenged person to function as a Notary but certain physical deficiency may not hamper a legal practitioner from functioning as a Notary.

20. Though, as already noticed, 'Notary' is not a 'post', still for the amelioration or to elevate such sections of practitioners, who wish to function as Notaries, the State Coordination Committee, appointed by the appropriate Government, may be the Central Government or the State Government, as the case may be, shall go into various aspects, including the efficiency of an individual legal practitioner for his capacity to function as a Notary.

21. In fact, we are of the view that, as per the Disabilities Act, a Committee appears to have been reconstituted with an avowed object to augment or alleviate the conditions of the legal practitioners, who are physically challenged and particularly who do not or cannot possess the benefit of reservation.

22. Therefore, we deem it appropriate to direct the Special Chief Secretary, Revenue Department, Government of Andhra Pradesh, Secretariat, Secretariat Buildings, Hyderabad, to whom the petitioner by name Sri I.Sambasiva Rao, Advocate, Flat No.306, Royal Residency, Humayun Nagar, Masab Tank, Hyderabad, had already made a representation, to forward the said representation to the State Coordination Committee, for consideration and disposal, in accordance with the objects enumerated in the Disabilities Act, under intimation to the petitioner.

23. It is also clarified that, if necessary, the petitioner may also be given an opportunity of personal hearing, if requested by

the petitioner. If the representation of the petitioner is not available on record, the petitioner is at liberty to make a fresh representation to the Special Chief Secretary, Revenue Department, Government of Andhra Pradesh, Secretariat, Secretariat Buildings, Hyderabad, who, shall, in turn, forward the same to the State Co-ordination Committee, as referred to above, for consideration, on priority basis.

24. With the above observations and directions, the writ petition is disposed of. However, there shall be no order as to costs.

JUSTICE D.S.R.VARMA

JUSTICE D.APPA RAO

16TH APRIL 2007
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THE HONOURABLE SRI JUSTICE D.S.R.VARMA
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TAKEN UP WRIT PETITION NO.26397 OF 2005

(Order of the Division Bench
delivered by
The Honourable Sri Justice D.S.R.Varma)

16TH APRIL 2007

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[1] AIR 1997 Ori (1)

[2] AIR 1967 ALLAHABAD 173 (V 54 C 55) LUCKNOW BENCH